UNIT I COMMERCIAL LAW

1. **A Holder in Due Course -**
    - "Holder in due course" means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer, or the payee or indorsee thereof, if 1[payable to order], before the amount mentioned in it became payable, and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.
    - In commercial law, a holder in due course is someone who takes a negotiable instrument in a value-for-value exchange without reason to doubt its legitimacy.
2. **Agreement to Sell -**

An agreement of sale constitutes the terms and conditions of sale of a property by the seller to the buyer. These terms and conditions include the amount at which it is to be sold and the future date of full payment.

3. **An Agent -**
    - An agent, in legal terminology, is a person who has been legally empowered to act on behalf of another person or an entity.
    - An agent may be employed to represent a client in negotiations and other dealings with third parties. The agent may be given decision-making authority.
4. **Bill of exchange -**
    - A bill of exchange is a written order used primarily in international trade that binds one party to pay a fixed sum of money to another party on demand or at a predetermined date.
    - Bills of exchange are similar to checks and promissory notes—they can be drawn by individuals or banks and are generally transferable by endorsements.
5. **Breach of Contract -**

A breach of contract is a violation of any of the agreed-upon terms and conditions of a binding contract. The breach could be anything from a late payment to a more serious violation, such as the failure to deliver a promised asset.

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6. **Caveat Emptor -**

- Caveat emptor is a Latin phrase that translates to "let the buyer beware." It means that an individual buys at their own risk.
- Caveat emptor is sometimes used in legal contracts as a type of disclaimer. In many jurisdictions, it is the contract law principle that places the onus on the buyer to perform due diligence before making a purchase.

7. **Conditional Sale -**

A conditional sale refers to a transaction in which the purchaser receives possession of and the right to use certain goods, but the title remains with the seller until the performance of a condition is met by the buyer.

8. **Contract -**

- Contract, in the simplest definition, a promise enforceable by law.
- The promise may be to do something or to refrain from doing something.
- The making of a contract requires the mutual assent of two or more persons, one of them ordinarily making an offer and another accepting.

9. **Difference between Contract And Agreement –**

Particulars	Agreement	Contract
Section	Agreement is defined under Section 2 (e) of the Indian Contract Act, 1872.	A contract is defined under Section 2 (h) of the Indian Contract Act, 1872.
Definition	Every promise(s) forming the consideration for each other is an agreement as per the Act.	An agreement enforceable by law is a contract as per the Act.
Essentials	An offer and its acceptance eventually form an agreement.	When an agreement is enforceable by law, it becomes a contract.
Scope	Scope of an agreement is too wide.	Scope of contract is limited since it has to comply with numerous conditions.
After Effects	Not all agreements create legal obligations upon the parties.	All contracts lead to legally obliged parties unless there arises some legal exception.
Nature	An agreement can be legal as well as illegal.	A contract has to be legal to be effective.
Inter-relation	An agreement is preliminary to a contract.	A contract cannot be entered into without agreement of parties.
Example	An agreement to attend a party whereby gifts have to be sent is a social gesture and not a legal obligation	An agreement to attend a social event whereby entry is available through paid tickets is a valid contract enforceable under law.

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10. Difference between Sub Agent and Substituted Agent –

DISTINCTION BETWEEN AN AGENT AND A SUB-AGENT

Agent	Sub-agent
An agent is appointed by a principal and is under his control.	A sub-agent is appointed by an agent and as such is under the control of the agent.
An agent acts under the principal.	A sub-agent acts under an agent.
A privity of contract exists between a principal and an agent.	No privity of contract exists between a principal and a sub-agent.
An agent can ask for remuneration from the principal.	A sub-agent cannot ask for remuneration from the principal.

11. Draft -

A piece of text, a formal suggestion, or a drawing in its original state, often containing the main ideas and intentions but not the developed form:

12. Duties of Agent -

1. Right to remuneration
2. Right to indemnity
3. Right to compensation
4. Right of retainer
5. Right of lien

13. Guarantee -

- Guarantee is a legal term more comprehensive and of higher import than either warranty or "security".
- It most commonly designates a private transaction by means of which one person, to obtain some trust, confidence or credit for another, engages to be answerable for him.

14. Implied Condition in Contract of Sale -

According to Section of Sales of Goods Acts (1932), 'A condition is a stipulation essential the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. Condition is a crucial matter in a sale agreement that is specified by a buyer to the seller.

15. Negotiable Instrument -

A negotiable instrument is a signed document that promises a sum of payment to a specified person or the assignee. In other words, it is a formalized type of IOU (I Owe You): A transferable, signed document that promises to pay the bearer a sum of money at a future date or on-demand. The payee, who is the person receiving the payment, must be named or otherwise indicated on the instrument.

16. Noting and Protesting -

Noting and Protest is a proactive measure to protect the holder's right of recourse against the drawer and endorsers of a dishonored bill. Noting means recording (noting) the minutes of dishonor, by the 'Notary Public' on the dishonored bill. Noting on a paper affixed to the dishonored bill or partly on the dishonored bill and partly on the paper attached to the bill is permitted under Negotiable Act. Protest is the next step of noting. A formal certificate is issued with Notary's seal, attesting the fact that the bill is dishonored.

17. Offer -

An offer is a conditional proposal made by a buyer or seller to buy or sell an asset, which becomes legally binding if accepted. An offer is also defined as the act of offering something for sale, or the submission of a bid to buy something.

18. Principal -

As defined in Section 182 of the Indian Contract Act, 1872, an agent is a person employed to do any act for another, or to represent others in dealings with third parties and the person for whom such act was done or who was so represented was so-called "the principal".

An agent is merely an extended hand of the principal and cannot claim independent rights.

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19. Promissory Note -

A promissory note is a debt instrument that contains a written promise by one party (the note's issuer or maker) to pay another party (the note's payee) a definite sum of money, either on-demand or at a specified future date.

A promissory note typically contains all the terms pertaining to the indebtedness, such as the principal amount, interest rate, maturity date, date and place of issuance, and issuer's signature.

20. Quasi Contract -

A quasi contract is an after-the-fact contract between two parties who were otherwise not in a legal commitment to one another. This kind of contract is mandated by a judge seeking to address a situation where one party benefited from something at the expense of the other.

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UNIT II COMPANY LAW AND COMPETITION ACT

1. Sale -

A transaction between the buyer and the seller in which the seller sells intangible or tangible goods, assets, or services against money is known as a sale. Sale is done between two or more parties.

A sale can also be defined as an agreement between the two parties in the financial market, where the buyer and seller agree upon a definite price of a security.

2. Scope and Objective of the Sale Of Goods Act, 1930 -

- *Scope* - The act deals with "Goods" but not with other movable property, e.g. actionable claim of money. In other words, this Act does not deal with movable property other than Goods and immovable property.

  The sale of goods act deals with "Sale" but not with mortgage (which is dealt with under the Transfer of Property Act, 1882) or pledge (which is dealt with under the Indian Contract Act, 1872).
- *Objective* - It provides for the setting up of contracts where the seller transfers or agrees to transfer the title (ownership) in the goods to the buyer for consideration. It is applicable all over India. Under the act, goods sold from owner to buyer must be sold for a certain price and at a given period of time.

3. Valid Contract -

A valid contract is an agreement, which is binding and enforceable. In a valid contract, all the parties are legally bound to perform the contract. The Indian Contract Act, 1872 defines and lists the essentials of a valid contract through interpretation through various judgments of the Indian judiciary.

4. Various Methods of Discharge –

- Discharge of contract by breach of contract
- Discharge of contract by accord and satisfaction
- Discharge of contract by the impossibility of performance
- Discharge of contract by lapse of time
- Discharge of contract by agreement

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5. Various Modes of Delivery -

MEANING AND MODES OF DELIVERY

According to Sec. 2(2) of the Act, delivery means "voluntary transfer of possession of goods from one person to the other person." –

Types of delivery of Goods:

1) *Actual Delivery*: Where the seller or his authorized agent physically handover the contracted goods to buyer or his authorized agent by giving in possession.
2) *Symbolic Delivery*: When the goods are bulkier (or ponderous), where actual handover is not possible, a symbolic handover is done. (Ex: handover of key of car or warehouse or papers)
3) *Constructive Delivery or Delivery by Attornment:* where a third person i.e. an agent or bailer, who holds the goods on behalf of the buyer and acknowledges the buyer.

6. Various Types of Bills -

A bill is said to be a draft statute that is presented in either houses of the Parliament only after being passed by both the houses of the Parliament and it has received president's assent. These are legislative proposals that are introduced in the forms of bills.

Types of Bills in India

1. Ordinary Bills
2. Money bills
3. Financial bill
4. Constitutional Amendment Bill
5. Ordinance Replacing Bill

7. Void Contract -

A void contract is a formal agreement that is effectively illegitimate and unenforceable from the moment it is created.

A void contract differs from a voidable contract because, while a void contract is one that was never legally valid to begin with (and will never be enforceable at any future point in time), voidable contracts may be legally enforceable once underlying contractual defects are corrected. At the same time, void contracts and voidable contracts can be nullified for similar reasons.

8. <u>Voidable Contract -</u>

A voidable contract is a formal agreement between two parties that may be rendered unenforceable for any number of legal reasons, which may include:

- Failure by one or both parties to disclose a material fact
- A mistake, misrepresentation, or fraud
- Undue influence or duress
- One party's legal incapacity to enter a contract (e.g., a minor)
- One or more terms that are unconscionable
- A breach of contract

The legal right to void such a contract is known as disaffirmance.

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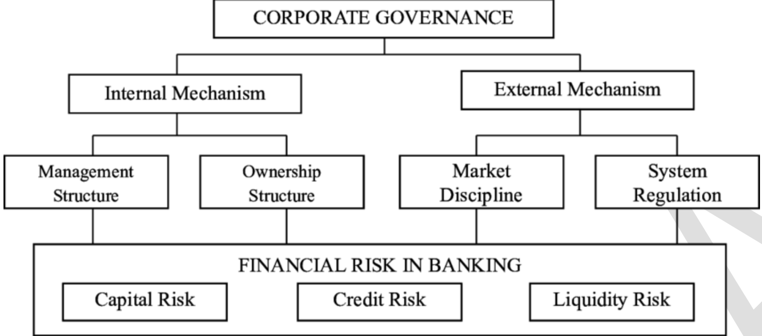
9. Difference between the Agreements and Sell –

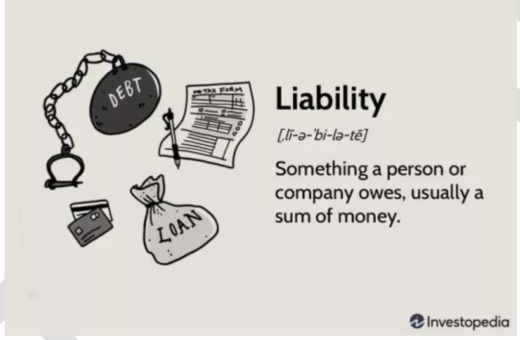
Sl. No.	Particulars	Sale	Agreement to Sell
1.	Ownership Transference	The property (ownership or title) in the goods passes from the seller to the buyer immediately so that the seller is no more owner.	The property (ownership or title) in the goods has to pass at a future time or after the fulfilment of certain conditions specified in the contract.
2.	Risk of Loss	Where the goods sold under the contract of sale are destroyed, the loss falls squarely on the buyer as the ownership in the goods has already passed on to the latter. Even though the goods are in the possession of seller.	Where the goods under the agreement to sell are destroyed, the loss falls squarely on the seller as the ownership is still vested with the seller even though the possession of the goods is with the buyer.
3.	Consequences of violating the contract	Where the buyer fails to pay the price, the seller cannot seize the goods. The seller can only file a case against the buyer for violating the contract.	Where the buyer violates the contract, the seller can repossess the goods from the former. He can sue for damages for violation of the contract.
4.	Nature of contract	It is an executed contract i.e. completed contract	It is an executory contract, i.e. contract yet to be performed by the party to the contract.
5.	Insolvency of the Buyer	In a sale, if a buyer becomes insolvent before he pays for the goods even though the goods sold are under the possession of the seller, the latter has to return them to the Official Receiver or Assignee as the ownership of goods has already been transferred to the buyer. The seller can claim only rateable dividend. The seller has to inevitably part with the possession of the goods under his custody.	If the buyer becomes insolvent before the payment of the price, the seller can retain the goods if they are under his possession or even he can repossess the goods even if the possession of the goods is transferred to the buyer. In other words, the seller is not bound to lose possession of the goods.
6.	Insolvency of the Seller	If the seller become insolvent before delivering the goods to the buyer, the buyer can claim the delivery of the goods from the Official Receiver or Assignee as the ownership is already passed on to the buyer.	The buyer cannot do so. Further if the buyer has already paid the price of the goods or made any advance, he can claim only rateable dividend and not the goods because the ownership in the goods is not yet passed to him.

10. Brief the mechanism of corporate governance.

Corporate governance mechanisms or variables are many but frequently considered mechanisms are: board composition, board committees, CEO duality/separation, board meetings and the extent of shareholder concentration.



11. Define Liability.



i. The state of being responsible for something

ii. A liability is something a person or company owes, usually a sum of money. Liabilities are settled over time through the transfer of economic benefits including money, goods, or services.

iii. Liabilities can be contrasted with assets. Liabilities refer to things that you owe or have borrowed; assets are things that you own or are owed.

12. Define Memorandum of Association.

Memorandum of association of the company deals with all aspects of that particular organisation such as the operations delegation of duties and policies, principles, etc. The memorandum of association of any company is formed or designed by considering the objective of a particular firm. In the year 2013, section 399 of the companies act, designed to form an MOA, which is the public document and needs to get aware of this moa to all employees of an organisation.

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13. Define prospectus.

A prospectus is a formal document required by and filed with the Securities and Exchange Commission (SEC) that provides details about an investment offering to the public. A prospectus is filed for offerings of stocks, bonds, and mutual funds.

The prospectus can help investors make more informed investment decisions because it contains a host of relevant information about the investment or security. In areas other than investing, a prospectus is a printed document that advertises or describes an offering such as a school, commercial enterprise, forthcoming book, etc. All forms of prospectus exist to attract or inform clients, members, buyers, or investors.

14. Discuss briefly the importance of corporate governance.

Good corporate governance ensures that an organisation's board of directors meet regularly, retain control over the business and have clearly defined responsibilities. It also ensures a robust risk management system. Corporate governance is one of the cornerstones of any good business.

Governance helps you to always act in the best interests of the business. More specifically, it can improve the performance of your business, help it become more stable and productive, and unlock new opportunities. It can reduce risks, and enable faster and safer growth. It can also improve reputation and foster trust.

15. Discuss briefly the liability of director.

Liability Towards Company

- Liability of Ultra- Vires Acts
- Liability for Negligence
- Liability for Fraud

Liability Towards Outsiders

- Liability for Ultra- Vires Acts
- Liability as Agents
- Liability in Relation to Allotment

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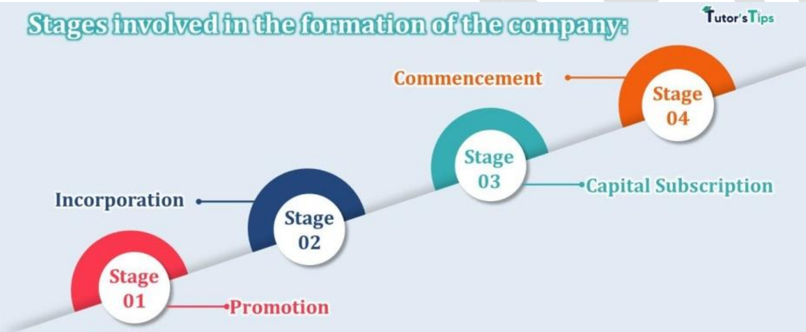
16. Discuss briefly the various types of directors.

Types of Directors in a Company

a) Managing Director
b) Independent Director
c) Small Shareholders Director
d) Women Director
e) Additional Director
f) Alternate Director
g) Nominee Director
h) Executive Director
i) Non-executive Director

17. Enlist the stages in company formation.



The major steps in formation of a company are as follows:

I. Promotion stage
II. Registration stage
III. Incorporation stage
IV. Commencement of Business stage

18. Explain the modes of winding – up.

According to Section 270 of the Companies Act, 2013, a company can be wind up in two ways. They are:

i. Compulsory Winding up of Company by Tribunal
ii. Voluntary Winding up of Company

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UNIT III INDUSTRIAL LAW

1. List any three vital duties of a director.

i. Act within powers
ii. Promote the success of the company
iii. Exercise independent judgment
iv. Exercise reasonable care, skill and diligence
v. Avoid conflicts of interest (a conflict situation)
vi. Not accept benefits from third parties
vii. Declare interests in proposed or existing transactions or arrangements with the company

2. List the essential elements of corporate governance.

Six Essential Elements of Effective Corporate Governance

1. Director independence and performance
2. A focus on diversity
3. Regular compensation review and management
4. Auditor independence and transparency
5. Shareholder rights and takeover provisions
6. Proxy voting and shareholder influence

3. List the nature of the company.

NATURE AND CHARACTERISTICS OF COMPANY

i. Corporate Personality
ii. Company As An Artificial Person
iii. Company Is Not A Citizen
iv. Company Has Nationality And Residence
v. Limited Liability
vi. Perpetual Succession
vii. Separate Property
viii. Transferability Of Shares
ix. Capacity To Sue And Be Sued
x. Contractual Rights
xi. Limitation Of Action
xii. Separate Management
xiii. Voluntary Association For Profit
xiv. Termination Of Existence

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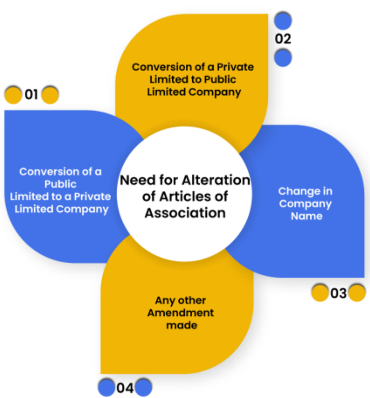
4. List the steps in the procedure for Alteration of AOA.



1. Convene a Meeting of Board of Directors [As per Section 173 & Secretarial Standard (SS-1)]
2. Convene General Meeting [Section 96, 100 and Secretarial Standard (SS-2)]
3. Filing of Form MGT-14 with ROC [Section 117]
4. Alteration of Articles to be noted in every copy [Section 15(1)]

5. State the characteristics of corporate governance.

Seven Characteristics of Corporate Governance

i. Discipline
ii. Transparency
iii. Independence
iv. Accountability
v. Responsibility
vi. Fairness
vii. Social responsibility

6. State the different modes of Winding – Up.

Winding up is the process of liquidating a company. While winding up, a company ceases to do business as usual. Its sole purpose is to sell off stock, pay off creditors, and distribute any remaining assets to partners or shareholders. The term is synonymous with liquidation, which is the process of converting assets to cash.

1. The sole purpose of a business that is winding up is to sell off assets, pay off creditors, and distribute any remaining assets to the owners.
2. The two main types of winding up are compulsory winding up and voluntary winding up.

7. State the grounds on which a person ceases to be the member of the company.

A person may cease to be the member of the company:

i. If he transfers his shares to another person.
ii. If his shares are forfeited

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iii. If the company sells his share under some provision in the article
iv. If he rescinds the contract to take shares on the ground of misrepresentation in the prospectus or on the ground of irregular allotment
v. If redeemable preference share are redeemed
vi. If he surrender his share .were surrendered in permitted
vii. If she warren r issued to him is exchange of fully paid shares

8. **State the misstatements in the prospectus.**

A prospectus is a document that contains information that the public can use to subscribe to or purchase a company's securities. If it contains any inaccuracies, it will have major ramifications.

Any statement in the prospectus that is erroneous or misleading is referred to as misstatements in the prospectus. A misrepresentation is defined as the inclusion or omission of a fact that is likely to mislead the public.

The prospectus shall be regarded a prospectus with an erroneous statement if a relevant matter has been omitted from the prospectus and such omission is likely to mislead the public.

9. State the various types of prospectus.

Types of prospectus

1. Deemed Prospectus
2. Red Herring Prospectus
3. Shelf prospectus
4. Abridged Prospectus

10. What are the clauses associated with MOA?

Memorandum of Association (MOA) includes six different clauses as mentioned below:

1. Name Clause
2. Domicile Clause
3. Objects Clause
4. Liability Clause
5. Capital Clause
6. Subscription Clause

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11. What are the objectives of corporate governance?

Objectives of Corporate governance

1. To create social responsibility
2. To create a transparent working system
3. To create a management accountable for corporate functioning
4. To protect and promote the interest of shareholders
5. To develop an efficient organization culture
6. To aid in achieving social and economic goals

12. What do you mean by winding – up?

Winding up refers to

i. *closing the operations of a business,*
ii. *selling off assets,*
iii. *paying off creditors and*
iv. *Distributing any remaining assets to the owners.*

Once the winding-up process is complete, the dissolution step comes into play. This is when the company formally under law ceases to exist.

13. What is a company meeting? Give its characteristics.

A company meeting may be defined as a concurrence or coming together of at least a quorum of members in order to transact either ordinary or special business of the company.

The characteristics of a company meeting are as follows:

1. Two or more persons (who are the members of the Company) must be present at the meeting
2. The assembly of persons must be for discussion and transaction of some lawful business
3. A previous notice would be given for convening a meeting
4. The meeting must be held at a particular place, date and time

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5. The meeting must be held as per provisions/rules of Companies Act

14. What is a company?

A company is a type of business structure that is a separate legal entity from its owners. It's a complex business structure, with higher set-up and administrative costs because of extra reporting requirements and higher-level legal obligations.

15. What is corporate governance?

Corporate governance is defined, described or delineated in diverse ways, depending on the writer's purpose. Writers focused on a disciplinary interest or context often adopt narrow definitions that appear purpose-specific.

16. What is the need of corporate governance?

Corporate governance is important because it creates a system of rules and practices that determines how a company operates and how it aligns the interest of all its stakeholders. Good corporate governance leads to ethical business practices, which leads to financial viability. In turn, that can attract investors.

17. What is the procedure of members' voluntary winding – up?

<u>Steps for voluntary winding up –</u>

i. Declaration of Solvency duly verified by an affidavit by majority of directors
ii. Board meeting
iii. General Meeting of shareholders/members
iv. Intimation to ROC
v. Intimation to Insolvency and Bankruptcy Board of India (IBBI)
vi. Public Announcement by Liquidator

18. What is the qualification of a director?

The Companies Act has not prescribed any academic or professional qualifications for directors. Also, the Act imposes no share qualification on the directors. So, unless the company's articles contain a provision to that effect, a director need not be a shareholder unless he wishes to be one voluntarily. But the articles usually provide for a minimum share qualification.

19. Write a brief note on capital subscription / flotation.

Flotation is the process of converting a private company into a public company by issuing shares available for the public to purchase. It allows companies to obtain financing externally instead of using retained earnings to fund new projects or expansion.

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The term "flotation" is commonly used in the United Kingdom, whereas the term "going public" is more widely used in the United States.

20. Write a short note on registration of articles.

Articles of Association can be considered as a contract between the members and the company. These articles bind the present as well as the future members of the company. The company and its members are bound by the articles as soon as the document is signed.

i. Members have various rights and duties towards the company.
ii. The articles together with the memorandum of association make the constitution of the company.

21. Write a short note on the structure of corporate governance.

The structure of corporate governance determines the distribution of rights and responsibilities between the different parties in the organization and sets the decision-making rules and procedures. It is usually up to the management board to decide how the company will develop.

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Essay Type

1. Describe the grounds of compulsory winding up of a company.

<u>Grounds for compulsory winding up of a company</u>

Winding up refers to the last stage in the life of a company. It refers to a legal process through which a company is put to an end.

<u>Methods of Winding Up</u>
The Act envisages two kinds of winding up. They are the following:

1. Winding up by the National Company Law Tribunal or compulsory winding up.

2. Voluntary winding up. This may be:

i. Members voluntary winding up, or
ii. Creditors voluntary winding up.

This article discusses about the winding up of company by National Company Law Tribunal or otherwise called Compulsory winding up.

<u>Winding up by the National Company Law Tribunal</u>
Winding up of a company under the order of the National Company Law Tribunal is also known as compulsory winding up.

Grounds for Compulsory Winding Up or Winding Up by the National Company Law Tribunal

Sec. 433 of the Act lays down the circumstances in which the National Company Law Tribunal can order for a winding up of the company. They are as follows:

1. Special Resolution of the Company: If the company by a special resolution, resolved that the company be wound up by the National Company Law Tribunal. However, the National Company Law Tribunal is not bound to order for a winding up simply because the company has so resolved.

2. Failure to hold Statutory Meeting: If the company fails to hold the Statutory Meeting and fails to file the Statutory Report, the Registrar can present a petition for an order of winding up.

The National Company Law Tribunal, instead of effecting a winding up order may direct that the company to deliver statutory report to held statutory meeting.

3. Failure to Commence Business: Failure to commence business means that the company has not commence its business operation within a year from the date of its incorporation or suspended the business for the entire year. Here also, the power of the National Company Law Tribunal is discretionary and will be exercised only when the company is not intending to continue its business operation.

4. Reduction in Membership: The National Company Law Tribunal may order for winding up of the company if the number of members is reduced to the Statutory minimum.

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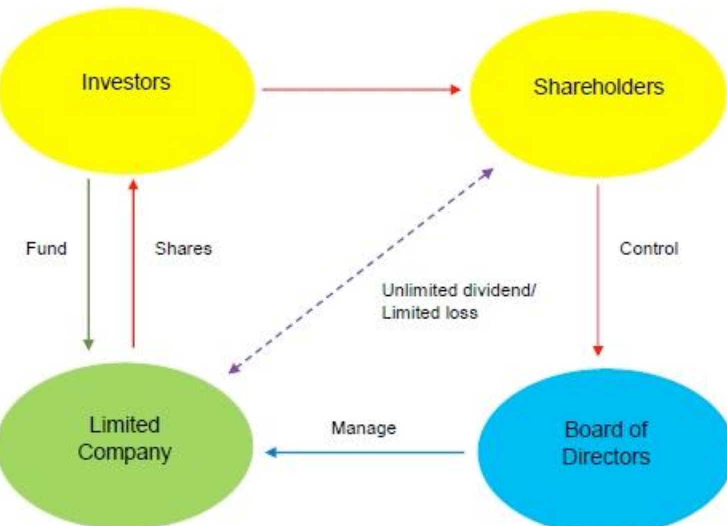
2. **Discuss the duties and liabilities of directors.**



Director -

A Director is defined by Section 2 (13) of the Companies Act of 1956 as "any person exercising the position of Director, by whatever name called." Their appointment, duties, retirement rights, and salary are all covered under the Articles of Association.

Rights and Duties of Directors in a Company

In order to create policies that would yield high results, directors must have a vision. To achieve high levels of success, they must set the company's goals. They must be able to conduct the company's objectives. Then there is the director's function and responsibilities. Directors have various safeguards in place to protect themselves and the company's interests. Below is the description of the Rights of Directors.

Director's Individual Rights

- Inspection of books of accounts.
- Right to receive board meeting notices.
- The right to obtain circular resolution draft.
- The right to a sitting fee.
- The right to speak in General Meetings.
- Inspection of board meeting minutes is a legal right.
- He has the right to record his dissent.

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- Right to vote and participate in Board meetings.
- The ability to claim travel, lodging, and other expenditures.
- The right to call board meetings.
- The right to choose a Chairman
- Right to nominate a Managing Director and make dividend recommendations
- Investment approval authority.
- Right to request an alternate director from the board of directors.
- Collective Rights in a Company
- Right to prohibit share transfers

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Duties of Director in a Company

- The Board of Directors functions as the Company's agent. However, when acting for the Company, the Director must fulfill the following responsibilities:

- Act in good faith and in accordance with the Company's Articles of Association

- To act in the best interests of the Company and its stakeholders in order to promote the Company Act's objectives.

- Exercise due and reasonable care when performing obligations.

- To make independent decisions.

- Not to get engaged in a situation where his interests are at odds with the Companies.

- He is unable to delegate his duties to anyone else.

- To avoid gaining an unfair advantage or profit.

Director's Liability in a Company

The directors may be held jointly or collectively accountable for any and all conduct detrimental to the company's interests. Although the Director and the Company are separate entities, the Director can be held liable on the Company's behalf in the following circumstances:

SEBI can take legal action against directors who fail to make the required disclosures under the SEBI (Acquisition of Shares & Takeovers) Regulations, 1997, and SEBI (Prohibition of Insider Trading) Regulations, 1992.

Share application cost refunds or excess share application fees.

To cover the cost of qualification shares.

Civil Liability for Misrepresentation in a Prospectus.

Any present or previous Director (during the defaulter's time period) shall be liable to pay the tax shortfall as well as any penalties unless a Director or Former Director can establish that the non-recovery or non-payment of taxes is due to gross negligence or violation of duty.

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If the majority of shareholders participate in “fraud on the minority,” or discriminatory behaviour, the directors and the corporation maybe held accountable. As a result, this is a precious clause that Directors should be aware of and try to exploit as much as possible.

A company is required by the Companies Act to acquire insurance to protect itself from losses caused by its directors. A director may also obtain insurance to cover damages suffered owing to the company’s liability, with the corporation charging the price.

Conclusion

The board of directors is the heart and soul of the firm, and they are crucial to its success. Because more power comes with more responsibility, firm management should be in the hands of competent people who know how to utilize their power wisely. A board of directors governs the firm, and all of the corporation’s decisions are made in an organizational meeting.

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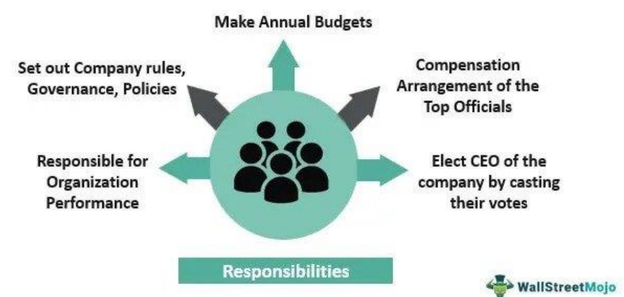
3. **Discuss the functions of Board of Directors.**



Functions of Board Directors

1. Board of directors is the primary authority to frame the dividend policy of the company shares.
2. Issue shares and debentures and invest funds into different companies to enhance profits.
3. Perform to the appointment of subsequent directors and other committee members for the management's effective functioning.
4. Fill up the vacancies by appointing additional directors or alternate directors.
5. The Board is the company's face to make representations in external affairs such as contracts, legal liabilities, and other trade and businesses.
6. They provide sanction or give consent for the contracts and agreements in which the company business is interested.
7. They have the power to contribute funds for defence and political interest.
8. The Board's primary role is to act on behalf of the shareholders; thus, they maintain the shareholders' fiduciary obligation. According to Millet LJ, a fiduciary is 'someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence."
9. The prime reason for the separation of ownership and management is to regulate the company's trading and business effectively; the Board carries this out.
10. The Board of directors are the first persons to be held accountable for any activities against the law; they possess the duty to scrutinise all the company's actions.
11. They probe into the misuse of executive powers and corporate information and take necessary steps
12. their primary function is to promote the company's objectives as stated in the memorandum of association and work towards fulfilling it.
13. They prepare and implement the standards of corporate governance.

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14. One of their general function is to conduct board meetings at regular intervals which are of intermittent nature of the duty to be performed by the Board of directors.
15. They form audit committees and appoint relevant skilled members to inspect and maintain the government's financial accounts and audits.

4. Elaborate the process of formation of company under The Companies Act, 1956.

Step	Description
Step 1	Selection of the type of a company
Step 2	Preliminary Requirements
Step 3	Reservation of Name
Step 4	Preparation of the Memorandum of Association and Articles of Association
Step 5	Filing of the documents with the Registrar of companies
Step 6	Certificate of Incorporation and allotment of Corporate Identity Number
Step 7	Effect of Registration
Step 8	Commencement of business

Company Formation under the Companies Act of 1956

- Select in order of preference a few suitable names, not less than four, ensuring that the name does not resemble the name of an existing Company.
- Apply to the jurisdictional Registrar of Companies to ascertain the availability of name in Form 1A along with mentioned fee. Registrar of Companies informs the status of the application within 14 days. If the name proposed is not available, apply again for a fresh name.
- Arrange for drafting of the Memorandum and Articles of Association(MA) through a Consultant, vetting of the same by the Registrar of the Companies and printing of the same.
- Arrange for stamping of the M & A as per Registrar of Companies instructions.
- Get the Memorandum and Articles of Association signed by, at least 2 persons in case of Private Limited Company, at least 7 persons in case of Public Limited Company, each shall also write in his own hand his fathers name, occupation and address and number of shares subscribed for, and duly witnessed by at least one person who shall also write in his own hand his full details as above.
- The M & A should be dated on a date after the date of stamping.

The following forms are to be filled and signed:

- Declaration of Companies of Companies Act 1956, Form No.1.
- Notice of situation of Registered Office of the Company Form No. 18.
- Particulars of Directors, Manager or Secretary Form No.32.
- Consent to act as Directors Form No. 29.

File the following documents with the Registrar of Companies with necessary Registration and filing for:

- Stamped and signed copy of Memorandum and Articles of Association.
- Form No. 1, 18, 32, and 29 in duplicate.
- Any other agreement referred to in the Memorandum and Articles.
- Any agreement proposed for appoint of Managing Director/whole time Director.
- Certified true copy of the Registrar of Companies letter intimating availability of name.
- Power of attorney in favor of any person for making corrections on their behalf in the documents and papers filed for registration.

Obtain the certificates of incorporation from Registrar of Companies:

- In case of Private Limited Companies, they can commence business immediately on receipt of the certificates of incorporation from the Registrar of Companies.

- In case of Public Limited Company following additional steps are to be completed.

- Arrange for payment of application and allotment money in cash by the Directors on the shares taken or agreed to be taken by them.
- File the statement in lieu of prospectus with the Registrar of Companies in accordance with Schedule IV of the Companies Act 1956.
- File a declaration in Form No.20 with the Registrar of Companies to the effect that the application and allotment monies have been paid/will be paid in respect of shares taken up by the Directors.
- Obtain the certificate of commencement of Business from the Registrar.

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5. **Enumerate and explain the various documents to be filed with the registrar.**

Types of companies:

Companies can be classified into various types on the basis of their mode of incorporation, number of the members and the liability of the members.

The most common types of companies are as follows:

- Private Company (or Private Limited Company)
- Public Company (or Public Limited Company)
- One Person Company

List of documents required before submission of a company:

- Original copy of formal letter issued by ROC regarding availability of Company name
- Director Identity Number (DIN) of all those directors of a proposed company
- DSC - Digital Signature Certificate
- Form-1 for incorporation of a company
- Form-18 for situation or address of the proposed company
- Form-32 for particulars of proposed directors, managers and secretary

The Companies Act, 2013 passed by the parliament has received the assent of the President of India on August 29, 2013. The act consolidates and amends the law relating to companies. The Companies Act, 2013 has been notified in the official gazette on August 30, 2013. Some of the provisions of the act have been implemented by a notification published on September 12, 2013. The provisions of Companies Act, 1956 is still in force.

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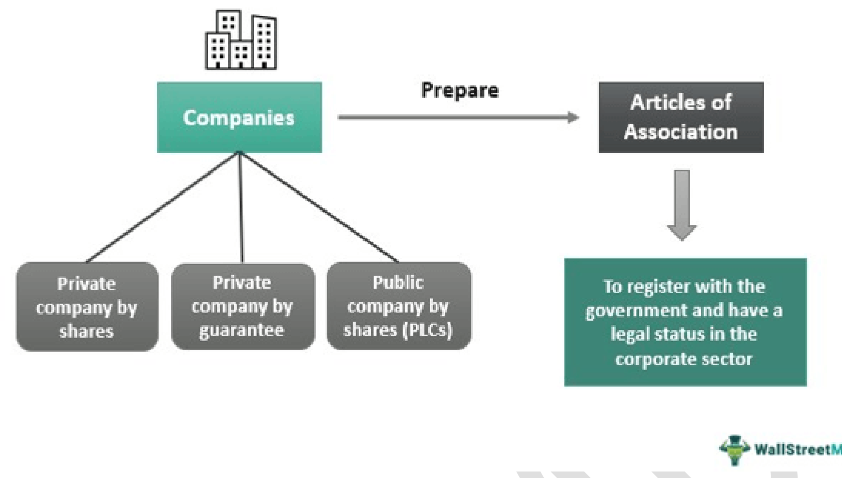
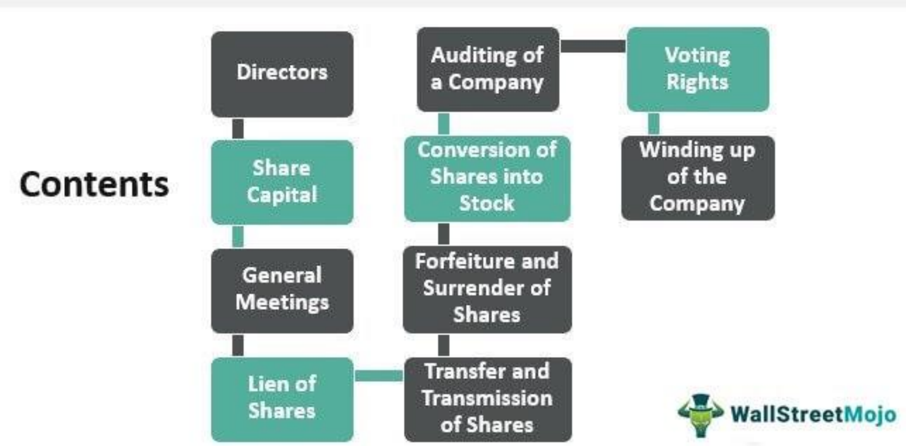
6. Explain the Articles of Association.





Articles of Association

Articles of association form a document that specifies the regulations for a company's operations and defines the company's purpose. The document lays out how tasks are to be accomplished within the organization, including the process for appointing directors and the handling of financial records.

Articles of association can be thought of as a user's manual for a company, defining its purpose and outlining the methodology for accomplishing necessary day-to-day tasks.

The content and terms of the "articles" may vary by jurisdiction, but typically include provisions on the company name, its purpose, the share structure, the company's organization, and provisions concerning shareholder meetings.
In the the U.S. and Canada, articles of association are often referred to as "articles" for short.

Understanding Articles of Association

Articles of association often identify the manner in which a company will issue shares, pay dividends, audit financial records, and provide voting rights. This set of rules can be considered a user's manual for the company because it outlines the methodology for accomplishing the day-to-day tasks that must be completed.

Company Name

As a legal entity, the company must have a name that can be found in the articles of association.

All jurisdictions will have rules concerning company names. Usually, a suffix such as "Inc." or "Ltd." must be used to show that the entity is a company. Also, some words that could confuse the public, such as "government" or "church," cannot be used or must be used only for specific types of entities. Words that are offensive or heinous are also usually prohibited.

Purpose of the Company

The reason for the creation of the company must also be stated in the articles of association.

Some jurisdictions accept very broad purposes—"management"—while others require greater detail—"the operation of a wholesale bakery," for example.

Share Capital

The number and type of shares that comprise a company's capital are listed in the articles of association.

There will always be at least one form of common share that makes up a company's capital. In addition, there may be several types of preferred shares. The company may or may not issue the shares, but if they are found in the articles of association, they can be issued if and when the need presents itself.

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Organization of the Company

The legal organization of the company, including its address, the number of directors and officers, and the identity of the founders and original shareholders, are found in this section. Depending on the jurisdiction and type of business, the auditors and legal advisors of the company may also be in this section.

Shareholder Meetings

The provisions for the first general meeting of shareholders and the rules that will govern subsequent annual shareholder meetings—such as notices, resolutions, and votes—are laid out in detail in this section.

7. **Explain the special privileges of a private company.**

Definition

Section 2(68) of Companies Act, 2013 defines private companies. According to that, private companies are those companies whose articles of association restrict the transferability of shares and prevent the public at large from subscribing to them. This is the basic criterion that differentiates private companies from public companies.

Features of Private Companies

These are some features that distinguish private companies from other types of companies:

- No minimum capital required: There was a minimum paid-up share capital requirement of Rs. 1 lakh previously, but that is omitted now.
- Minimum 2 and maximum 200 members: A private company can have a minimum of just two members (but just one is enough if it a One Person Company), and a maximum of up to 200 members.
- Transferability of shares restricted: Private companies cannot freely transfer their shares to the public like public companies. This is why stock exchanges never list private companies.
- "Private Limited": All private companies must include the words "Private Limited" or "Pvt. Ltd." in their names.
- Privileges and exemptions: Since private companies do not freely transfer their shares and involve limited interest by members, the law has granted them several exemptions that public companies do not enjoy.

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Privileges of Private Companies

The Companies Act has provided certain privileges and exemptions to private companies that public companies do not possess. These privileges accord them greater freedom in conducting their affairs. Here are some examples of them:

- No need to prepare a report for annual general meetings.
- Only 2 minimum directors required.
- No need to appoint independent directors.
- They can adopt additional grounds for the disqualification of directors and vacation of their office.
- They can pay greater remuneration to their directors than compared to some other types of companies.

Limitations of Private Companies

Despite all the advantages they offer, private companies also have the following limitations:

- Private companies cannot freely transfer shares to the public.
- They find it more difficult than public companies to access external financial support.
- Shareholders have greater risks and liabilities.

How are the companies classified on the basis of liability?

Companies on the Basis of Liabilities

When we look at the liabilities of members, companies can be limited by shares, limited by guarantee or simply unlimited.

a) Companies Limited by Shares

Sometimes, shareholders of some companies might not pay the entire value of their shares in one go. In these companies, the liabilities of members is limited to the extent of the amount not paid by them on their shares.

This means that in case of winding up, members will be liable only until they pay the remaining amount of their shares.

b) Companies Limited by Guarantee

In some companies, the memorandum of association mentions amounts of money that some members guarantee to pay.

In case of winding up, they will be liable only to pay only the amount so guaranteed. The company or its creditors cannot compel them to pay any more money.

c) Unlimited Companies

Unlimited companies have no limits on their members' liabilities. Hence, the company can use all personal assets of shareholders to meet its debts while winding up. Their liabilities will extend to the company's entire debt.
Sate the points of differences between the memorandum of association and the articles of association of a limited company.

8. Difference between MOA and AOA

Parameter	MOA	AOA
Defines	Basic details of the company	Rules and regulations abided by the company
Subordinate to	Companies act	Memorandum
Components	Clauses as defined in the following sections	Can be modified as required
Nature	Public	Private
Amendable	Cannot be amended retrospectively	Can be amended retrospectively
Required for	Every company	Private companies
Needed during registration	Yes	No

9. What are the contents of the prospectus of a company? Explain.

Prospectus

It means a formal document that a Public Company issues to invite offers from public for subscribing its shares. It includes all the material information related to shares that a Company offers to the public. Furthermore, it usually help the investors to take investment decisions.

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Types of Prospectus

These are of different types. Some of them are:-

1. Red Herring
2. Shelf
3. Abridged
4. Deemed

Requirements as to Issue of Prospectus of a Company

There are some requirements that company has to comply with before issuing it. Those are:-

1. There should be disclosure of material matters.
2. Moreover it must be dated.
3. Company must file a duly signed copy of it to ROC for its registration.
4. Furthermore, Company shall file it with various agencies such as SEBI, Stock exchanges and other agencies.
5. SEBI examines the draft of Prospectus to ensure disclosures and compliances.

Contents of a Company Prospectus

i. Name of the Company
ii. Registered Address of Company
iii. Objects of the Company
iv. Purpose of the issue
v. Nature of Business
vi. Capital structure of Company
vii. Name and address of Signatories and no of shares subscribed by them
viii. Qualification shares of the Directors
ix. Particulars of Debentures and redeemable preference shares
x. Remuneration of Directors and Promoters
xi. Minimum Subscription for allotment
xii. Date of opening and closing of issue
xiii. Details of Underwriter
xiv. Underwriting Commission and Brokerage
xv. Name and address of Auditor, Company Secretary, Banker and Trustee of Company
xvi. Particulars of material documents
xvii. Expected rate of dividend and voting rights

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10. Does the sale of goods act provide any rules to delivery of goods, why?

Rules as to delivery

(1) Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered at the place at which they are at the time of the agreement to sell, or, if not then in existence, at the place at which they are manufactured or produced.

(2) Where under the contract of sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

(3) Where the goods at the time of sale are in the possession of a third person, there is no delivery by seller to buyer unless and until such third person acknowledges to the buyer that he holds the goods on his behalf:

Provided that nothing in this section shall affect the operation of the issue or transfer of any document of title to goods.

(4) Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

(5) Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state shall be borne by the seller.

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Delivery of wrong quantity

(1) Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but it the buyer accepts the goods so delivered he shall pay for them at the contract rate.

(2) Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate.

(3) Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

(4) The provisions of this section are subject to any usage of trade, special agreement or course of dealing between the parties.

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11. Elucidate the special rule of cheque and draft.

Cheques and demand draft(DD) are two financial instruments provided by banks to their customers for making payments. Although both of them are used to transfer or encash money, there are some significant differences.

Meaning of Demand Draft and Cheque

A cheque is a negotiable instrument which includes instructions to the bank, duly signed by the drawer, to transfer funds of a certain amount to a specified individual subject to clearance. A demand draft is also a negotiable instrument, but is payable in full on demand.

Key differences between a demand draft and a cheque

A demand draft(DD) cannot be dishonoured as the money is already paid to the bank, while in the case of a cheque, it can bounce due to instructions to stop payment by the drawer or due to insufficient funds in the account.

While the bank issues a demand draft, a cheque is issued by the customer of the bank.

A cheque payment can be stopped by the customer, however, payment done through a DD cannot be stopped.

A cheque book is available only to the account holder, while a DD can be executed both by account holders as well as non-account holders.

While the bank does not charge a fee on a cheque, a demand draft entails a bank fee.

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In a cheque transaction, there are three parties involved: the drawee, drawer, and payee, while in a demand draft, only two parties are involved: drawer and payee.

12. Explain the conditional sales and rights of an unpaid seller.

Rights of an Unpaid Seller against the Goods

Right of Lien: An unpaid seller has a right to retain the goods till he receives the price. But to exercise this lien

i. He must be in possession of goods

ii. The goods must have been sold without any stipulation as to credit or where goods have been sold on credit, the terms of credit must have expired. He can also exercise the right of lien when the seller becomes insolvent.

iii. It must be remembered that the right of lien depends on actual possession. Thus where the seller has transferred to the buyer the documents of title to the goods, his lien is not affected so long as he continues to be in possession of the goods.

Right of Stoppage in Transit

Where the seller has delivered the goods to a carrier or other bailee for the purpose of transmission to the buyer, but the buyer has not acquired them, then the seller can stop the goods and regain the possession. In other words, goods must be neither with the seller nor with the buyer but should be in the hands of a carrier. Further, the buyer must have become an insolvent.

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Termination of Right of Stoppage

This right to stop the goods comes to an end:

(a) When the goods are delivered to the buyer or his agent or

(b) When, on arrival of the goods at the appointed destination, the carrier communicates to the buyer or his agent that he is holding the goods on his behalf

Right of Resale

The unpaid seller can resell the goods Where they are of a perishable nature or

After exercising his right of lien or stoppage in transit, even though he has given intimation to the buyer of his intention to resell, buyer has not tendered the price within a reasonable time.

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13. Explain the difference between the promissory note and bill of exchange.

Chart of Difference between Bills of Exchange and Promissory Note

Basis of Difference	Bills of Exchange	Promissory Note
Meaning	A bill of exchange is an instrument that contains a promise to pay some amount of money to a certain person after a certain period of time	A promissory note is an instrument that contains the written and signed promise by the maker(debtor) to pay a certain amount to the creditor on the specific date or on demand.
Number of Parties	There may be three type of parties 1. Drawer 2. Drawee 3. Payee	There may be Two type of parties 1. Maker 2. Payee
Nature	This is an order to make the payment by the seller of goods to the buyer of goods.	This is a promise to make the payment by the purchaser of goods to the seller of goods.
Document Drawn By	It is drawn by the creditor or seller.	It is drawn by the Debtor or Purchaser.
Copies to be issued	Local bill needs to prepare only a single copy but in case of the foreign bill, it needs to prepare three copies of the bill.	In all cases, it needs only a single copy.
Difference between Drawer and Payee	In the case of Bills of Exchange, drawer and payee may be the same person.	In the case of promissory note, the drawer cannot the payee.
Noting	Noting become very important in the case when the bill of exchange is dishonoured.	Noting is important in the case when the promissory note is dishonoured.
Need for Acceptance	The Bills of Exchange need a acceptance from the drawee or buyer because it is made by the seller of goods.	The promissory note, Don't need any acceptance, because it is made by the buyer himself.
Liability of Drawer	The liability of the drawer is secondary and conditional because the drawer is the seller, not a buyer. It only occurred in the case when he did discount the bill from the bank before the maturity date.	The liability of the drawer is primary because the drawer is the buyer. So, he has to pay the amount the seller or payee.

14. Explain the rights and duties of agent.

Rights and Duties of the Agent

Rights under the Indian Contract Act.

1. Right of Retainer (Section 217).
2. Right to Remuneration (Section 219 & 220).
3. Right of Lien (Section 221).
4. Right to Indemnity (Section 222 & 223).
5. Right to Compensation (Section 225).

Duties under the Indian Contract Act

1. Duty to avoid conflict of interest (Section 215 & 216).
2. Duty to maintain accounts (Section 213).
3. Duty of reasonable care and skills (Section 214).
4. Duty not to delegate his duties (Section 190 – 195).
5. Duty to follow instructions or customs (Section 211).
6. Duty to remit sums (Section 218).

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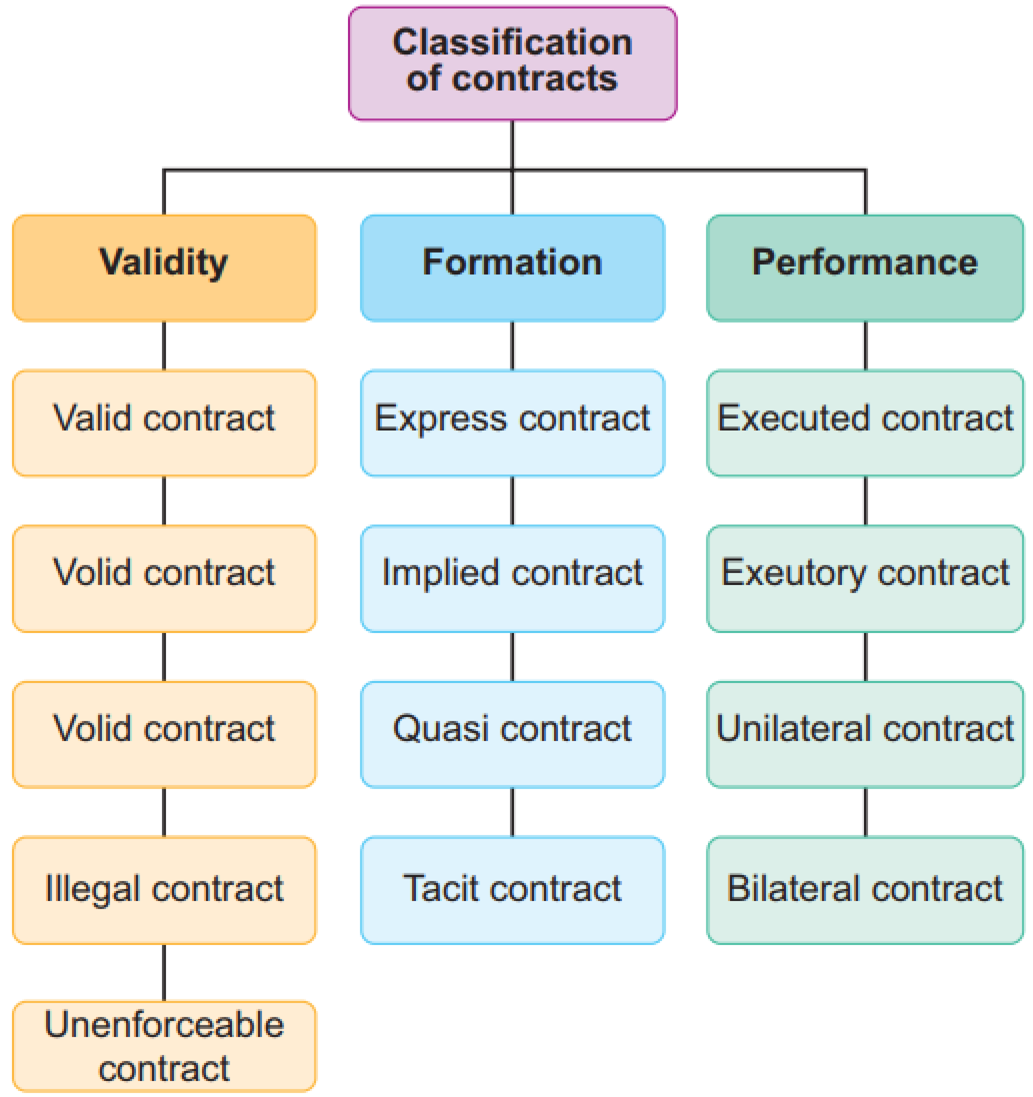
15. Explain the various classification of contract.



On the Basis of the validity

1. Valid Contract

An agreement which fulfils all the essentials prescribed by law on the basis of its creation. For example S offers to sell his car for Rs.2,00,000 to T. T agrees to buy it. It is a Valid Contract.

2. Void Contract (2(j))

A contract which ceases to be enforceable by law. A contract which does not satisfy any of the essential elements of a valid contract is said to be Void. For example A contract between drug dealers to buy and sell drugs is a void contract.

3. Voidable Contract 2(i)

An agreement which is enforceable by law at the option of one or more parties but not at the option of the other or others is a voidable contract. This is the result of coercion, undue influence, fraud and misrepresentation.

4. Illegal Contract

It is a contract which is forbidden by law. All illegal agreements are Void but all void agreements or contracts are not necessarily illegal. Contract that is immoral or opposed to public policy are illegal in nature.

Unlike illegal agreements there is no punishment to the parties to a void agreement.

Illegal agreements are void from the very beginning but sometimes valid contracts may subsequently become void.

5. Unenforceable Contract

Where a contract is unenforceable because of some technical defect i.e. absence in writing barred by imitation etc. If the parties perform the contract it will be valid, but the court will not compel them if they do not

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On the Basis of the Formation

1. Express Contract

A contract made by word spoken or written. According to Section. 9, in so for as the proposal or acceptance of any promise is made in words, the promise is said to be express. For example P says to Q 'will you buy my bicycle for Rs.1,000?" Q says to P "Yes".

2. Implied Contract

The implied contract is one, which is not expressly written but understood by the conduct of parties. Where the proposal or acceptance of any promise is made otherwise than in words, the promise is said to be implied. For example A gets into a public bus, there is an implied contract that he will pay the bus fare.

3. Quasi Contract

It is a contract created by law. Actually, there is no contract. It is based on the principle that "a person shall not be allowed to enrich himself unjustly at the expense of the other". In other words it is an obligation of one party to another imposed by law independent of an agreement between the parties.

4. Tacit Contract

A contract is said to be tacit when it has to be inferred from the conduct of the parties. For example obtaining cash through automatic teller machine, sale by fall of hammer of an auction sale.

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On the Basis of Performance

1. Executed Contract

A contract in which both the parties have fulfilled their obligations under the contract. For example X contracts to buy a car from Y by paying cash, Y instantly delivers his car.

2. Executory Contract

A contract in which both the parties are yet to fulfil their obligations, it is said to be an executory contract. For example A agrees to buy B's cycle by promising to pay cash on 15th June. B agrees to deliver the cycle on 20th June.

3. Unilateral Contract

A unilateral contract is a one sided contract in which only one party has performed his promise or obligation, the other party has to perform his promise or obligation.

For example X promises to pay Y a sum of Rs.10,000 for the goods to be delivered by Y. X paid the money and Y is yet to deliver the goods.

4. Bilateral Contract

A contract in which both the parties commit to perform their respective promises is called a bilateral contract. For example R offers to sell his fiat car to S for Rs.10,00,000 on acceptance of R's offer by S, there is a promise by R to Sell the car and there is a promise by S to purchase the car, there are two promises.

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16. State the nature and requisites of negotiable instruments.

A negotiable instrument is a signed document that promises a sum of payment to a specified person or the assignee. In other words, it is a formalized type of IOU: A transferable, signed document that promises to pay the bearer a sum of money at a future date or on-demand. The payee, who is the person receiving the payment, must be named or otherwise indicated on the instrument.

- A negotiable instrument is a signed document that promises a sum of payment to a specified person or the assignee.
- Negotiable instruments are transferable in nature, allowing the holder to take the funds as cash or use them in a manner appropriate for the transaction or according to their preference.
- Common examples of negotiable instruments include checks, money orders, and promissory notes.

REQUISITES AS TO A NEGOTIABLE NOTE

1. It must be in writing and signed by the maker
2. It must contain an unconditional promise to pay a sum certain in money
3. It must be payable on demand, or at a fixed or determinable future time
4. It must be payable to order or to bearer

REQUISITES AS TO A NEGOTIABLE BILL

1. It must be in writing and signed by the maker
2. It must contain an unconditional order to pay a sum certain in money
3. It must be payable on demand, or at a fixed or determinable future time

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4. It must be payable to order or to bearer

5. The drawee must be named or otherwise indicated therein with reasonable certainty

17. What is agent? What are the difference kinds of agents?

An agent, in legal terminology, is a person who has been legally empowered to act on behalf of another person or an entity. An agent may be employed to represent a client in negotiations and other dealings with third parties. The agent may be given decision-making authority.

Classification of Agents

1. General Agent
2. Special Agent
3. Mercantile Agent

1. General Agent:

The principal appoints a general agent to do anything within his authority in all transactions or in all transactions relating to a specific trade, business or matter. The principal grants the authority to the agent to act on his behalf.

It may be assumed by the third party that such an agent has the authority to do all that is usual for a general agent to do. Any private restrictions on the agent's authority do not affect the third party.

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2. Special Agent:

He is the one who is appointed or employed to do or perform only a specific act, task or function. Outside of this special act, task or function, he has no authority or power. In this case, the third party cannot assume that the agent has unlimited authority. Thus, any act of the agent outside his authority cannot bind the principal.

3. Mercantile Agent:

As per section 2(9) of the Sale of goods act, 1930, a mercantile agent is a person who in the customary course of business has an agent's authority either to sell or consign the goods for the purpose of sale or to buy goods or to raise money on the security of goods. Thus, this definition covers the following:

a. Factors:

A factor is a person who is appointed to sell goods which are put in his possession or to buy goods for his principal. He is the evident owner of the goods in his custody and can thus sell them in his own name and receive payment for them.

He also has an insurable interest in the goods in his custody and a general lien regarding any claim that he may have to arise out of the agency.

b. Brokers:

A broker is a person whose business is to make contracts with the other parties for the sale and purchase of goods or securities for brokerage.

He does not have the possession of the goods and acts in the name of the principal. Also, he has no lien over goods because he has no possession of goods.

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c. Del Credere Agent:

A del credere agent is a person who ensures or guarantees his principal that the creditors of goods will pay for the goods they buy for extra remuneration. In the case of failure to pay by the third party, he needs to pay the due amount to his principal.

d. Bankers:

The relation between a banker and a customer is basically that of a debtor and creditor. However, when a banker buys or sells securities or collects cheque, dividends, interests, bills of exchange or promissory notes on behalf of his customer, he becomes the agent of his customer. Thus, he has a general lien on all the securities in his possession regarding the general balance due to him by the customer.

e. Partners:

As per the Partnership Act, every partner is an agent as well as the principal of every other partner in a Partnership firm. Also, every partner is the agent of the firm for the business of the firm.

f. Auctioneers:

An auctioneer is a person who sells the goods by auction. An auction is a process by which goods are sold to the highest bidder in a public competition. He cannot warrant his principal's title to the goods.

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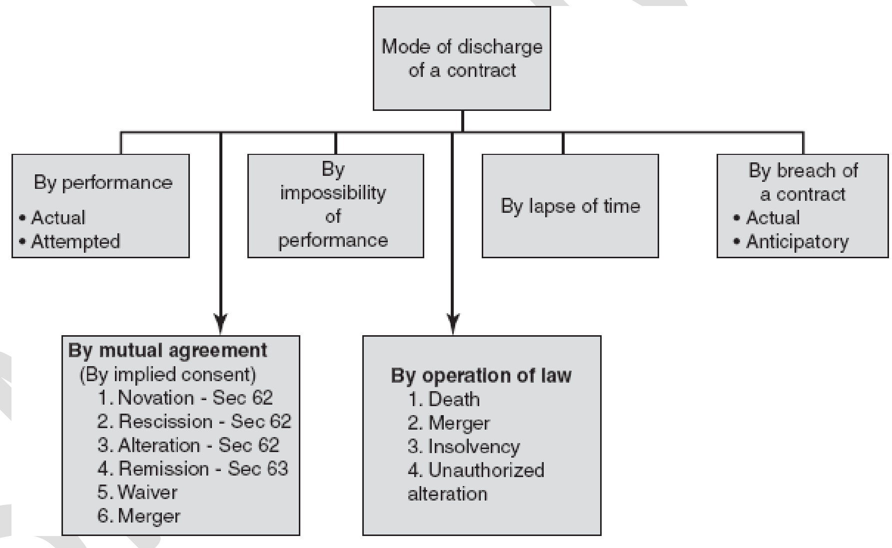
He is the agent of the seller until the goods are auctioned or knocked down. However, after the knockdown, he becomes the agent of the buyer. Also, he is evidence that the sale took place.

18. What is discharge of contract? What are the methods of discharge?

Contract, in the least complex definition, is a guarantee that is enforceable by law. The guarantee or promise might be to accomplish something or to shun accomplishing something. The creation of an agreement requires the common consent of at least two people, one of them usually making a proposition and another accepting the contract.



19. What is the performance of contract? What are the essential elements of performance?

The term 'Performance of contract' means that both, the promisor, and the promisee have fulfilled their respective obligations, which the contract placed upon

them. For instance, A visits a stationery shop to buy a calculator. The shopkeeper delivers the calculator and A pays the price. The contract is said to have been discharged by mutual performance.

ESSENTIAL ELEMENTS OF A VALID CONTRACT

The essential elements of a valid contract are:

- **Offer and Acceptance**: There shall be an offer or proposal by one party and acceptance of that offer by another party resulting in an agreement (consensus ad idem).
- **Intention to create legal relations**: There shall be an intention between the parties to create legal relations.
- **Lawful consideration**: The agreement is supported by a lawful consideration. Consideration means something in return.
- **Capacity of parties**: The parties to the contract shall be legally competent to contract.
- **Free consent:** The consent of the parties shall be genuine and free.
- **Legal object**: The object of the contract shall be legal and shall not be opposed to public policy.
- **Certain terms**: The terms of the contract shall be certain and shall not be vague.
- **Possible performance**: The agreement is capable of being performed i.e., it is not impossible of being performed.

20. Distinguish between

i) Sale and agreement to sell

Difference between Sale and Agreement to Sell

Parameters	Sale	Agreement to Sell
Meaning	Immediate transfer of ownership once the payment is made	The agreement of selling to a buyer under certain conditions on the specified future date
Type of Contract	It is an executed contract	It is an executory contract
What happens if there is a breach of contract	The buyer can return the product or get a refund if the product or service is not met up to expectations	The buyer can claim only for damages and not the price
Reselling	The seller cannot resell after a sale	The seller can resell when conditions are not met
Existence of property/product	The property already exists and only then is a sale made	The property doesn't need to exist at the time of signing an agreement to sell, because the sale is made on a future date

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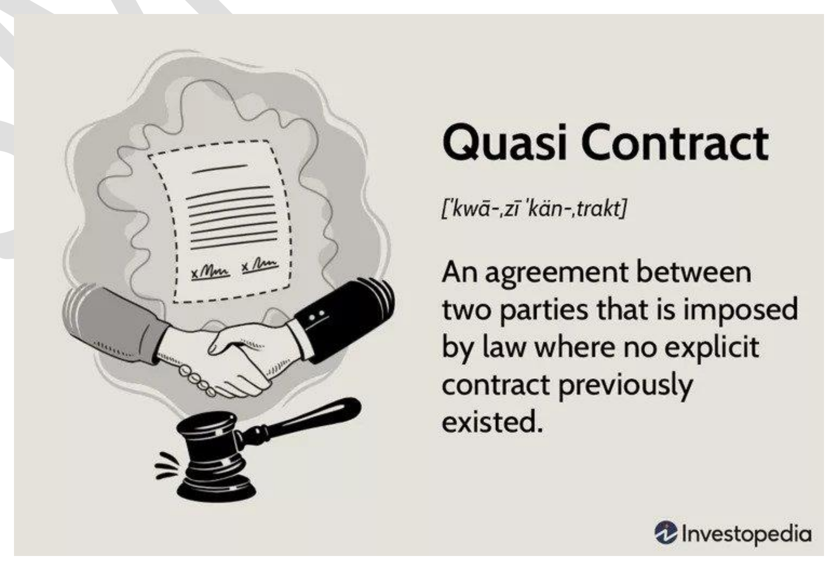
ii) Condition and warranty

Sl. No	Basic of Difference	Condition	Warranty
1.	**Meaning**	It is a stipulation which is essential to the main purpose of the contract of sale.	It is a stipulation which is collateral to the main purpose of contract.
2.	**Significance**	Condition is so essential to the contract that the breaking of which cancels out the contract.	It is of subsidiary or inferior character. The violation of warranty will not revoke the contract.
3.	**Transfer of Ownership**	Ownership on goods cannot be transferred without fulfilling the conditions.	Ownership on goods can be transferred on the buyer without fulfilling the warranty.
4.	**Remedy**	In case of breach of contract, the affected party can cancel the contract and claim damages.	In the case of breach of warranty, the affected party cannot cancel the contract but can claim damages only.
5.	**Treatment**	Breach of condition may be treated as breach of warranty	Breach of warranty cannot be treated as breach of condition.

21. Write the short notes on following aspects.

i. Quasi contract



SAMPLE

Quasi contract is another name for a contract implied in law, which acts as a remedy for a dispute between two parties that don't have a contract. A quasi contract is a legal obligation—not a traditional contract—which is decided by a judge for one party to compensate the other. Thus, a quasi contract is a retroactive judgment to correct a circumstance in which one party acquires something at the expense of the other.

- A quasi contract is a retroactive remedy between two parties who have no contract with one another.
- It is created by a judge to correct a circumstance in which one party acquires something at the expense of the other.
- The plaintiff must have furnished an asset, item, benefit, or service to another party such that the defendant should have known to pay for it.
- The defendant must have accepted, or acknowledged receipt of, the item but made no effort or offer to pay for it even when they know they should.

Quasi Contract

Only Implied in Law: Implied in law means that a payment obligation is created by law, in this case a judge who renders a remedy.

Ordered by a Judge: Quasi contracts are ordered by a judge because contracts implied in law are not covered under contract law.

No Contract Exists: Quasi contracts are not contracts, they are remedies for disputes between parties that are the result of one party receiving an unjust enrichment

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Types of Quasi Contract

The types of quasi contract are outlined in sections 68 thru 72 of the Contract Act of 1872, as follows:

Section 68: A person who is incapable of making contracts is provided with the supplies by a third party on behalf of the incapable person or anyone he is legally obligated to support. Third parties can recover the price of the supplier from the property of the unable person.

Section 69: A person who makes a payment on behalf of another party is obligated to pay the money according to law. Therefore, the person who made the payment is entitled to reimbursement from the other party.

Section 70: When a person does something lawfully for another person, or delivers something without intending to do the same gratuitously, the receiving party is obliged to compensate the former party.

Section 71: A person who finds goods that belong to another party and takes ownership of them has the same responsibility as a bailee.

Section 72: Someone who has been paid or delivered under coercion or mistakenly must repay or return the money.

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ii. Termination of agency

Termination of Agency

When the relationship between principle and agent comes to an end, it's known as termination of agency. Section: 201 – 210 deals with termination of agency.

Modes of termination: The provisions relating to the mode of agency are defined under Section 201 of the Indian Contract Act – 1872. Section- 201 which provides termination of agency is not comprehensive. We can divide termination of agency into two parts:

1. By the act of parties.
2. By the operation of law.

By the act of parties:

There are following manner in which by the act of parties the agency can be terminated:

Revocation by mutual agreement: The agency of contract can be terminated at any time by mutual agreement between the principal and the agent.

Revocation by the principal: Agency can be terminated by the principal by revoking the agent's authority. The principle can revoke his agent's authority when it has not been exercised by the agent reasonable, notice must be given for such revocation.

For Example- A empowers B to let A's house. Afterwards A lets it himself. This is an implied revocation of B's authority.

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Revocation by the Agent: The Agent also can revoke the agency by serving notice to the principle. As per section 206 of the Indian Contract Act 1872, the agent must give proper notice of renunciation / revocation of his principal. Otherwise, he shall be liable to make good for the loss to the principal for such notice.

By operation of law:

i. By the completion of agency
ii. By the end of time
iii. Death or insanity of principle or agent
iv. Insolvency of principle
v. Destruction of subject matter
vi. Principal becomes a foreign enemy
vii. Winding up of company or firm

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